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COMMITTEE AGAINST TORTURE

Sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 83rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 29 April 1991, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Organizational and other matters (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.83/Add.1.

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The meeting was called to order at 10.05 a.m.

1. The CHAIRMAN welcomed Mr. Gil Lavedra, who had been unable to be present during the first week of the current session, and announced that the Under-Secretary-General for Human Rights would address the Committee at 3 p.m. that afternoon.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Consideration of information and communications received under articles 20 and 22 of the Convention

2. Mr. BRUNI (Secretary of the Committee) said that the documentation relating to the information and communications submitted to the Committee for consideration under articles 20 and 22 of the Convention was not yet available in all the Committee's working languages. It would thus be preferable to postpone discussion of those matters to the following day.

3. Mr. BURNS deplored the fact that the Committee's work was constantly delayed by problems associated with the translation of documents. That seriously jeopardized the Committee's efficiency.

4. Mr. DIPANDA MOUELLE asked whether the members of the Committee might consider discussing the information and communications under articles 20 and 22 of the Convention on the basis of the texts available in English and in French and with simultaneous interpretation into the other languages.

5. Mr. BURNS said that the Spanish-speaking and Russian-speaking members of the Committee should not be placed at a disadvantage.

6. Ms. DIAZ PALACIOS said that, as a Spanish-speaking member of the Committee, she found Mr. Dipanda Mouelle's proposal acceptable, since the texts to be considered were very short.

7. Mr. GIL LAVEDRA said that he agreed with the proposal.

8. Mr. KHITRIN said that, although the Committee's four working languages were equally important, he was prepared to make an exception and work on the basis of the texts available, provided that the discussions were broken off if there was the slightest risk of misunderstanding.

9. The CHAIRMAN accepted that condition and said that it would be fully respected. The information and communications submitted under articles 20 and 22 of the Convention would accordingly be discussed in a closed meeting immediately after the current meeting.

Appointment of members of the Committee to monitor the work of the other human rights treaty bodies

10. The CHAIRMAN said that, at the conclusion of their third meeting, the persons chairing the human rights treaty bodies had recommended in their report(A/45/636, annex) that several members should be appointed in each Committee, each of whom should be responsible for following as closely as possible the developments in one of the other treaty bodies and reporting thereon to his or her Committee.

11. Following an exchange of views between members, it was agreed that Mr. Burns would liaise with the Committee on Economic, Social and Cultural Rights, Ms. Chanet with the Human Rights Committee, Mr. Dipanda Mouelle with the Committee on the Elimination of Racial Discrimination, Mr. Sørensen with the Committee on the Rights of the Child, and the Chairman with the Committee on the Elimination of Discrimination against Women.

12. Mrs. KLEIN-BIDMON (Representative of the Secretary-General), replying to a question by Mr. Khitrin, said that the composition of the group of three members appointed pursuant to the International Convention on the Suppression and Punishment of the Crime of Apartheid was renewed every two years and that it was not therefore possible to foresee in what language its work would be conducted at its next meeting. In any case, the Group's reports were issued in its four official working languages.

13. Mr. KHITRIN agreed to liaise with the Group of Three.

14. The CHAIRMAN expressed the hope that the secretariat would transmit the reports of the various bodies in question to the Committee against Torture and that it would send the relevant reports to each member of the Committee responsible for monitoring the work of a treaty body.

Consideration of the draft amendment to rule 64 of the rules of procedure proposed by Mr. Mikhailov

15. Mr. BRUNI (Secretary of the Committee) read out the proposal by Mr. Mikhailov for the addition to rule 64 of the rules of procedure of a third paragraph, which would read: "The Committee may appoint for each State party a rapporteur and an alternate rapporteur, who may visit the country concerned in order to study the practical problems of implementation of the Convention and to propose appropriate forms of systematic assistance in the preparation of the country report; the missions by the rapporteur and the alternate rapporteur shall qualify for a subsistence allowance from the State concerned, payable through the intermediary of the United Nations Secretariat in Geneva."

16. Mr. BURNS said that, in the English version of the proposed new paragraph, the words "may appoint for each State party" were confusing, since they gave the impression that the Committee could decide on a case-by-case basis whether or not to appoint a rapporteur and an alternate rapporteur to consider the report submitted by a State party. It also seemed to him that the appointment of a rapporteur and an alternate rapporteur was now an established feature of the Committee's practice.

17. With regard to the second part of the paragraph, it was unclear whether it would be for the Committee to decide on the desirability of sending a rapporteur and an alternate rapporteur on mission or whether that decision should be taken by the rapporteurs concerned.

18. Mr. MIKHAILOV said that the purpose of the proposed new paragraph to be added to rule 64 of the rules of procedure was to indicate that the Committee would appoint a rapporteur and an alternate rapporteur whenever a State party submitted a report. Although that procedure had already become part of the Committee's established practice, in his opinion, the time had come to provide

for it specifically in the rules of procedure. As for the visit that the rapporteur and alternate rapporteur might make to a given country, it went without saying that the mission would take place only if the State concerned had so requested and if the Committee considered it to be necessary.

19. He also wished to clarify the last phrase of the paragraph. In his view, the rapporteur and alternate rapporteur appointed to examine the report submitted by a State party should also be in a position to offer it assistance and advice in the preparation of a supplementary report when the initial report had been deemed insufficient by the Committee and to help it to solve the problems it encountered in the practical implementation of the Convention's provisions. As to the clause stipulating that the State party should bear the travel costs of the rapporteur and alternate rapporteur, he said that that possibility should not be provided for in rule 64 of the rules of procedure, but should instead be the subject of a decision by the Committee.

20. Mr. SØRENSEN said that he was not sure about the meaning of the first part of the proposed paragraph 3, which implied that the Committee was to appoint a rapporteur and an alternate rapporteur for each State party to the Convention, whether or not that State had submitted a report under article 19. In his view, the Committee would be going beyond its mandate by requiring a rapporteur and an alternate rapporteur to visit the 55 States that had ratified the Convention. If, on the other hand, the aim was to assist States parties whose initial report contained serious shortcomings in order to ensure that their supplementary report would meet the Committee's requirements, then the wording of the paragraph should be clarified accordingly.

21. Ms. CHANET welcomed Mr. Mikhailov's proposal, which testified to the constant concern of the members of the Committee to improve their working methods. She supported the idea that the rules of procedure should provide for the appointment of a rapporteur and an alternate rapporteur to consider the reports submitted by States parties, on the condition that the members of the Committee had first come to an agreement on a precise definition of their duties and functions.

22. With regard to sending the rapporteur and the alternate rapporteur on mission to the country whose report they had been appointed to consider, she referred to the comments already made by members concerning the draft optional protocol to the Convention, which stressed the need to adopt a stricter procedure in order to combat torture more effectively. The question was whether the Committee's rules of procedure should contain a provision akin to the inquiry provided for in article 20 of the Convention, which would be tantamount to imposing a new obligation on the State party. It would be better for States parties which encountered difficulties in the preparation of their reports to request, as they had already done in the past, assistance from the advisory services established for that purpose.

23. She also did not think it desirable to impose such visits on members of the Committee, still less on the rapporteur and the alternate rapporteur, whose mandate was to consider the information submitted by a State party and who needed to keep themselves at a distance in order to perform their duties impartially and objectively. It was nevertheless possible that some members

of the Committee might advise the authorities of some States parties or even visit the countries concerned, provided that those technical assistance missions were dissociated from the procedure for the consideration of the reports submitted by States parties.

24. Mr. PERLAS said that it was not clear from the proposed new paragraph whether the countries concerned were to be visited by the rapporteur and the alternate rapporteur before or after submitting their initial report. If the visit was to follow the submission of the initial report, it might be better to amend rule 67 of the rules of procedure relating to the furnishing of additional reports.

25. Mr. BURNS said that he shared Ms. Chanet's reservations about the current wording of the proposed paragraph, the effect of which would be to impose a further obligation on States parties. He recalled that the members of the Committee had judicial, administrative and executive functions which they were obliged to perform impartially and objectively in their capacity as independent experts and he took the view that any participation by the rapporteur or the alternate rapporteur in the preparation of the report of a State party which they might be called upon to consider was to be avoided, since it would patently compromise their impartiality.

26. On the other hand, he saw no reason why countries experiencing difficulties in drafting their reports should not approach the Chairman of the Committee or the advisory services with a request for technical assistance. As an independent expert, he was ready to give advice to any State requesting it. The Committee might even offer to assist States parties that were late in submitting their reports or to organize missions to those countries, provided that the rapporteur or the alternate rapporteur appointed for the State in question did not participate in the mission.

27. Mr. SØRENSEN said that he was concerned that the draft amendment might give to the rapporteur and the alternate rapporteur the possibility of visiting a country in order to study the specific problems posed by the implementation of the Convention, since that would, in his opinion, go beyond the Committee's mandate, as set forth, inter alia, in article 20 of the Convention. As Mr. Burns had pointed out, the rapporteur and the alternate rapporteur must show the utmost rigour in the consideration of the report submitted by a State party. Only after hearing their comments could the Committee consider offering its assistance to the State party in the preparation of an additional report.

28. Ms. DIAZ PALACIOS welcomed the draft amendment which had been proposed by Mr. Mikhailov and would institutionalize the functions of the rapporteur and alternate rapporteur appointed to consider the report of a State party. The new procedure, which the Committee had already put into practice, contributed to the effectiveness of its work and to the clarity of its discussions. However, it was not desirable that the rapporteur should become both judge and party with regard to a report that he was supposed to study fairly, impartially and objectively.

29. The purpose of the second part of the draft amendment was to enable States parties to submit more competently drafted reports, an aim that coincided with that of the note presented by the Chairman on the subject of the general guidelines concerning the form and content of the additional

reports that States parties had to submit under article 19, paragraph 1, of the Convention. It would therefore be wise to add to rule 64 of the rules of procedure an exact definition of the functions of the rapporteur and alternate rapporteur appointed to consider the report of a State party and to include Mr. Mikhailov's proposals on the drafting of reports in the note by the Chairman. States parties that so wished could then be guided and advised on the best methodology to adopt, without members of the Committee having to undertake missions, which would, in her view, lead to their exceeding their mandate.

30. The CHAIRMAN said that he also supported the proposal to add a new paragraph to rule 64 of the rules of procedure specifying that the Committee should entrust the consideration of each report submitted by a State party to a rapporteur and an alternate rapporteur specifically appointed for that purpose. However, as other members had already pointed out, to oblige a State party to accept a visit from the rapporteur and the alternate rapporteur would be tantamount to imposing an additional obligation on it.

31. With regard to the technical assistance that the Committee might offer to States parties, the Chairman proposed that members should either wait for the State concerned to request such assistance or else take the initiative by offering it to those States that had fallen furthest behind in submission of their reports.

32. He nevertheless shared the concern expressed by Ms. Chanet, Ms. Díaz Palacios and Mr. Burns with regard to involving the rapporteur and the alternate rapporteur, even at a considerable remove, in the preparation of the report they would subsequently be called upon to consider and, like Mr. Sørensen, he took the view that the Committee must be careful not to go beyond its mandate by taking action not provided for in articles 20 and 22 of the Convention.

33. With regard to the mission expenses of members visiting a country, it had to be borne in mind that the States parties which needed assistance were usually poor countries for which the cost of such a mission would be a heavy burden. The cost of the missions should therefore be charged to the regular human rights budget.

34. Lastly, he supported the comments by Ms. Chanet and Mr. Burns on the role of the advisory services established to furnish technical assistance in the field of human rights to States requesting it. Symposia might be held at the country level to assist them in fulfilling their obligations under the Convention, particularly with regard to the submission of reports; members of the Committee might take part in the symposia, provided that they then adopted a more reserved position during the discussion of the report they had helped to prepare.

35. Mr. MIKHAILOV said he took it that the members supported his proposal for the addition to rule 64 of the rules of procedure of a paragraph 3 on the appointment of a rapporteur and an alternate rapporteur to consider the report of a State party.

36. With regard to the proposed visits, he intended to reword the text of his draft amendment so as to specify that the rapporteur and alternate rapporteur would be able to visit a country only after considering the initial report of the State concerned and formulating their observations.

37. He was nevertheless still of the opinion that the State party should bear the costs of a mission it had requested and should refrain from requesting such assistance if it was unable to meet those costs.

38. The CHAIRMAN said that assistance in the field of human rights was already provided through the advisory services of the United Nations, which might, in turn, have recourse to members of the Committee other than the rapporteur and the alternate rapporteur directly involved. That solution would also solve the problem of costs, which were dealt with in the second part of Mr. Mikhailov's proposal and would be met from the United Nations regular budget.

39. Mr. BURNS said that Mr. Mikhailov's idea of offering assistance to States parties or inviting them to request the Committee's assistance was interesting, provided that the Committee's independence was not compromised. It was also important not to overlook the question of the experts' knowledge of languages, which to a considerable extent determined the choice of the rapporteur and alternate rapporteur. If the latter were to be excluded from the assistance given to a State party, the language field would be still further narrowed. It should also be specified whether the rapporteur and the alternate rapporteur appointed for the initial report would act as rapporteurs for subsequent reports.

40. Mr. SØRENSEN proposed that the consideration of the amendments to the rules of procedure should be postponed until the next meeting. The Committee would then have the text of the proposed amendments in all working languages.

41. The CHAIRMAN asked Mr. Mikhailov whether his proposal was that assistance should be provided following the discussion of the initial report. If so, what would happen in the case of States parties that had not yet submitted their initial report and that were very behindhand in submitting it? Should not those countries also be offered assistance?

42. Mr. MIKHAILOV said he agreed with Mr. Sørensen, Mr. Burns and Ms. Chanet that assistance should be provided only after consideration of the initial report or during the preparation of that report, at the request of the State party concerned.

43. Mr. BURNS said that it was important not to lose sight of Mr. Mikhailov's initial intention and that assistance must be provided to States parties encountering difficulties in the preparation of their reports, although the Committee must not exceed its mandate in providing such assistance.

44. Mr. GIL LAVEDRA said that he was not clear on what points agreement had been reached and that a number of the points raised had little bearing on the initial proposal. He therefore proposed that the various questions raised should be reconsidered one by one.

45. Mr. KHITRIN said that it would be useful if Mr. Mikhailov summarized the main points of his proposal to enable the Committee to take a decision on the matter at a subsequent meeting.

46. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that the submission of inadequate reports or delays in the drafting of reports were problems encountered by all the treaty bodies. The Human Rights Committee, for example, had urged States to submit their reports that were due and had offered them technical assistance in preparing those reports. The Committee on Economic, Social and Cultural Rights had suggested sending notes verbales to States whose reports were very overdue. The Committee on the Elimination of Racial Discrimination had decided, at its latest session in March 1991, to offer technical assistance in the framework of the advisory services of the Centre for Human Rights, by sending, where necessary, experts to the countries concerned. Moreover, the General Assembly and the Commission on Human Rights had for a very long time been requesting the treaty bodies to draw up technical assistance projects to help countries comply with the requirements laid down in the international instruments and prepare their periodic reports. At their last meeting, the persons chairing the treaty bodies had also requested that technical assistance to States should be increased. In addition, the advisory services of the Centre for Human Rights included a voluntary fund for technical assistance.

47. Ms. CHANET said that the decision taken by the Committee on the Elimination of Racial Discrimination showed the approach to be taken and that the Committee against Torture should imitate that example by placing its experience at the disposal of the Centre for Human Rights. It would no doubt also be useful for the Committee, like the Human Rights Committee, to draft procedures providing not only for the sending of notes verbales, but also for meetings with representatives of the countries whose reports were late.

48. Mr. SØRENSEN said that, unlike Mr. Khitrin, he did not think that there was any need to decide at the current session on possible amendments to the rules of procedure and that a decision should be deferred until the secretariat had drafted proposals that could be considered in all working languages at the next session.

49. The CHAIRMAN, speaking as a member of the Committee, said that the question of providing specifically in the rules of procedure for a rapporteur and an alternate rapporteur had to be dissociated from the question of technical assistance. While the first point no longer posed a problem, the second had still to be settled in the case of the Committee.

50. The procedures suggested by Ms. Chanet for obtaining reports from States parties were worth considering. In that connection, personal contacts with the missions of States parties would no doubt prove both very effective and highly instructive. It was during those contacts that the Committee would be able to propose assistance, in a form that had still to be decided. The Committee might base itself on the practice of the Committee on the Elimination of Racial Discrimination, which was to inform the Secretary-General that some of its members were ready to place their skills at the disposal of the Centre for Human Rights, either in the form of written recommendations or by visiting the country or region concerned. The question

whether or not to make the rapporteur and the alternate rapporteur responsible for that assistance was one that should probably be settled on a case-by-case basis, although it did seem desirable that assistance activities should be entrusted to the rapporteurs only in the last resort. In that connection, he considered that the experts' knowledge of languages was not a significant consideration, since, in most cases, they would be accompanied by interpreters.

51. Lastly, with regard to procedure, the Chairman, speaking on behalf of the Committee, said that it would come back at one of its subsequent sessions to the idea of adding to the rules of procedure in order to refer to the practice now followed by the Committee in its consideration of reports.

The public meeting rose at noon.